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CHARLES ELMORE CROPL
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Supreme Court of the United States

OCTOBER TERM, 1928

No. 491.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,
Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, SARAH JANE BROOKE and JOHN ARTHUR BROOKE,
Appellees.

STATEMENT OF APPELLANT UNDER RULE 12 OF THE REVISED RULES, SUBMITTED IN SUPPORT OF JURISDICTION TO REVIEW.

LEO C. WEILER,
Counsel for Appellant,
175 Fifth Avenue,
Borough of Manhattan,
New York, N. Y.

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SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1928

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STATEMENT OF APPELLANT UNDER RULE 12 OF THE REVISED RULES, SUBMITTED IN SUPPORT OF JURISDICTION TO REVIEW.

(a)

The statutory provision believed to sustain the jurisdiction.

Jurisdiction is sustained in this case by the provisions of Section 237(a) of the Judicial Code as set forth in the Amendatory Act of February 13, 1925, Chap. 229, 43 Stat. 936, United States Code, Title 28, Section 344(a).

This appeal is taken from a final judgment of the Supreme Court of the State of California, the highest Court of such State in which a decision in the suit could be had. By the judgment appealed from there is drawn

into question the validity of a statute of the State of California on the ground of its being repugnant to the constitution of the United States and such judgment below was in favor of the validity of the California statute.

The State statute involved is the California Workmen's Compensation, Insurance and Safety Act of 1917 (Chapter 586, California Statutes 1917) and amendments thereto.

The constitutional provisions which are involved are those of Section 2 of Article III relating to the judicial power of the United States over all cases of admiralty and maritime jurisdiction.

The judgment appealed from was entered after the effective date of the Act of January 31, 1928 abolishing writs of error and the appeal was taken and allowed after the effective date of the Act of April 26, 1928 which amended Section 2 of the Act of January 31, 1928.

The case is thus in this Court by way of appeal rather than by writ of error.

In obedience to the directions of the amending Act, the right to come to this Court was invoked in every respect in the same manner as upon a writ of error and although the appeal was sought, allowed and perfected prior to the effective date of the new Rule 46 of the Revised Rules, it was sought, allowed and perfected in conformity with the statutes theretofore governing a writ of error and in every respect in accord with the directions of the subsequently effective Rule 46.

(b)

Date of Judgment to be reviewed and date of application for allowance of appeal.

The judgment appealed from was entered in the Supreme Court of the State of California on March 27, 1928 (R., 172). (The Record, as yet, not having been printed, all references in this statement are to the pages of the typewritten transcript of the Record as filed).

The California Supreme Court entertained an application for re-hearing but on April 26, 1928 denied such re-hearing (R., 171).

The order allowing this appeal was signed by the Chief Justice of the Supreme Court of the State of California on June 7, 1928 upon presentation of the petition, assignment of errors and prayer for reversal (R., 177).

The elapsed time between the denial of the application for a re-hearing and the allowance of the appeal was forty-two days.

The elapsed time between the entry of the judgment appealed from and the allowance of the appeal was seventy-two days.

Upon the order allowing appeal, a writ was issued out of the United States District Court, Northern District of California on June 15, 1928 (R., 182-183). The Chief Justice of the Supreme Court of the State of California, in addition to signing the order allowing appeal on June 7, 1928, also allowed the writ at the foot thereof (R., 183).

This appeal being from the judgment of a Court of the State of California, the citation was made returnable within sixty days from the date thereof and was signed by the Chief Justice of the Supreme Court of the State of California on June 15, 1928 (R., 181). At the same time the bond on appeal was approved (R., 178-179).

The citation was served upon the counsel for the Appellees on June 15, 1928 (R., 181).

On June 16, 1928 the originals of all of the papers in connection with the application for, allowance and perfection of the appeal were filed in the office of the Clerk of the Supreme Court of the State of California.

All steps in connection with the appeal were timely taken.

(c)

Nature of the case and of the rulings below.

On April 8, 1926 John James Uttley Brooke, an employee of Morris Pleasure Fishing, Inc., was drowned in the waters of Santa Monica Bay, California. His death occurred in the course of and arising out of his employment.

The question for determination will be whether the California Workmen's Compensation, Insurance and Safety Act of 1917 as amended, as it was construed and applied to the facts in this case by the Court below, contravenes Section 2 of Article III of the constitution which extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

Throughout the case the present Appellant contended that the contract of employment of the decedent Brooke, the capacity and character of his service, the nature, character and extent of his employer's business, the place and manner in which such business was carried on, the character of the accident in which Brooke met his death and the locus of the accident and death, in short, the facts and circumstances of the case, operating together, defeated all operation of the Compensation Act with respect to the matter.

It was asserted by the Appellant that the facts and circumstances were not such as to permit of any application of the local law as against the exclusiveness of the admiralty and maritime jurisdiction.

The present Appellant, an insurance carrier within the meaning of the Compensation Act, was made a party to the proceedings before the Industrial Accident Commission of the State of California (R., 12).

The answer interposed (R., 36-37) denied that the Compensation Act was applicable to the accident in question, alleged that Brooke at the time of his death was

subject to the admiralty or maritime law and not to the State Compensation Act, alleged that the Industrial Accident Commission had no jurisdiction in the matter by reason of the maritime employment and denied any and all liability in the matter under the Compensation Act.

Hearings were had (R., 38-59) (R., 60-82). The Industrial Accident Commission asserted and assumed jurisdiction and made an award under the provisions of the Compensation Act (R., 83-84).

The present Appellant filed its petition for a rehearing before the Industrial Accident Commission (R., 85-90). In such application the jurisdiction of the Commission was again challenged. It was again asserted that the Compensation Act had no application to the facts and circumstances of the case and that the matter lay exclusively within the admiralty and maritime jurisdiction.

The Industrial Accident Commission denied the petition for re-hearing (R., 91). Whereupon the present Appellant applied to the District Court of Appeal of the State of California, Second Appellate District, Division Two, for a writ of review (R., 1-9). In such petition the jurisdiction of the Industrial Accident Commission to make an award under the Compensation Act was again challenged and the admiralty and maritime jurisdiction asserted (R., 5-6).

The District Court of Appeal granted the writ of review (R., 32) and thereafter on May 26, 1927 in a long opinion sustained the contentions of the present Appellant that the Industrial Accident Commission was without jurisdiction to render an award in this case under the Compensation Act (R., 125-142).

The present Appellees thereupon petitioned the Supreme Court of the State of California for a hearing of the matter (R., 92-124). It was there asserted by the present Appellees that the Compensation Act was applicable to the facts and circumstances of the case. The

Supreme Court of the State of California granted the application for a hearing (R., 143), the matter was submitted to it for consideration (R., 150), and on March 27, 1928 the Supreme Court of the State of California affirmed the award (R., 151, 172). The opinion written in the California Supreme Court (R., 152-156) shows that the jurisdiction which the Industrial Accident Commission asserted and the award which it made under the Compensation Act were sustained against the present Appellant's claim that sole power in relation to the case lay exclusively within the admiralty and maritime jurisdiction.

The California Supreme Court determined and decided that the Compensation Act applied to the facts in this case and such determination was made in disregard of the claim that such construction and application of the statute would contravene the constitutional provision above referred to.

The claim of Appellant with respect to the exclusiveness and sole application of the admiralty jurisdiction was re-asserted upon the application to the California Supreme Court for a re-hearing (R., 157-170).

The Federal or constitutional question was thus presented and litigated below, from the beginning to the end.

The Appellant's claims raising the jurisdictional question were again appropriately asserted in the assignment of errors (R., 174-176).

(d)

Cases believed to sustain the jurisdiction.

The Compensation Act is not claimed to be invalid *in toto* and for every purpose. Its invalidity is claimed only as construed by the Supreme Court of the State of California and applied by it to the state of facts in this case. Such construction and application in favor of

the statute and against the assertion from the outset of the exclusiveness of the admiralty and maritime jurisdiction render the lower Court's decision reviewable in this Court as of right. Until quite recently such review was by writ of error; now it is by way of appeal, if not precisely in the manner and form herein taken, at least substantially so.

Eureka Pipe Line Co. vs. *Hallanan*, 257 U. S. 265, 270-271.

United Fuel Gas Co. vs. *Hallanan*, 257 U. S. 277, 280.

Dahnke-Walker Milling Co. vs. *Bondurant*, 257 U. S. 282, 287-290.

Ward & Gow vs. *Krinsky*, 259 U. S. 503, 510.

Cudahy Packing Company vs. *Parramore*, 263 U. S. 418, 422.

Fiske vs. *Kansas*, 274 U. S. 380, 385.

T. Smith & Son, Inc. vs. *Taylor*, U. S. Supreme Court, October Term 1927, No. 186; Decided February 20, 1928.

Bountiful Brick Co. vs. *Giles*, U. S. Supreme Court, October Term 1927, No. 193; Decided February 20, 1928.

Conclusion.

This appeal, it is urged, is properly before the Court as of right under Section 237(a) of the Judicial Code.

Respectfully submitted,

LEO C. WEILER,
Counsel for Appellant.

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—against—

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Appellees.

BRIEF OF APPELLANT.

LEO C. WEILER,
Counsel for Appellant,
No. 175 Fifth Avenue,
New York, N. Y.

WILLIAM E. LOWTHER,
MAX ARE,
On the Brief.

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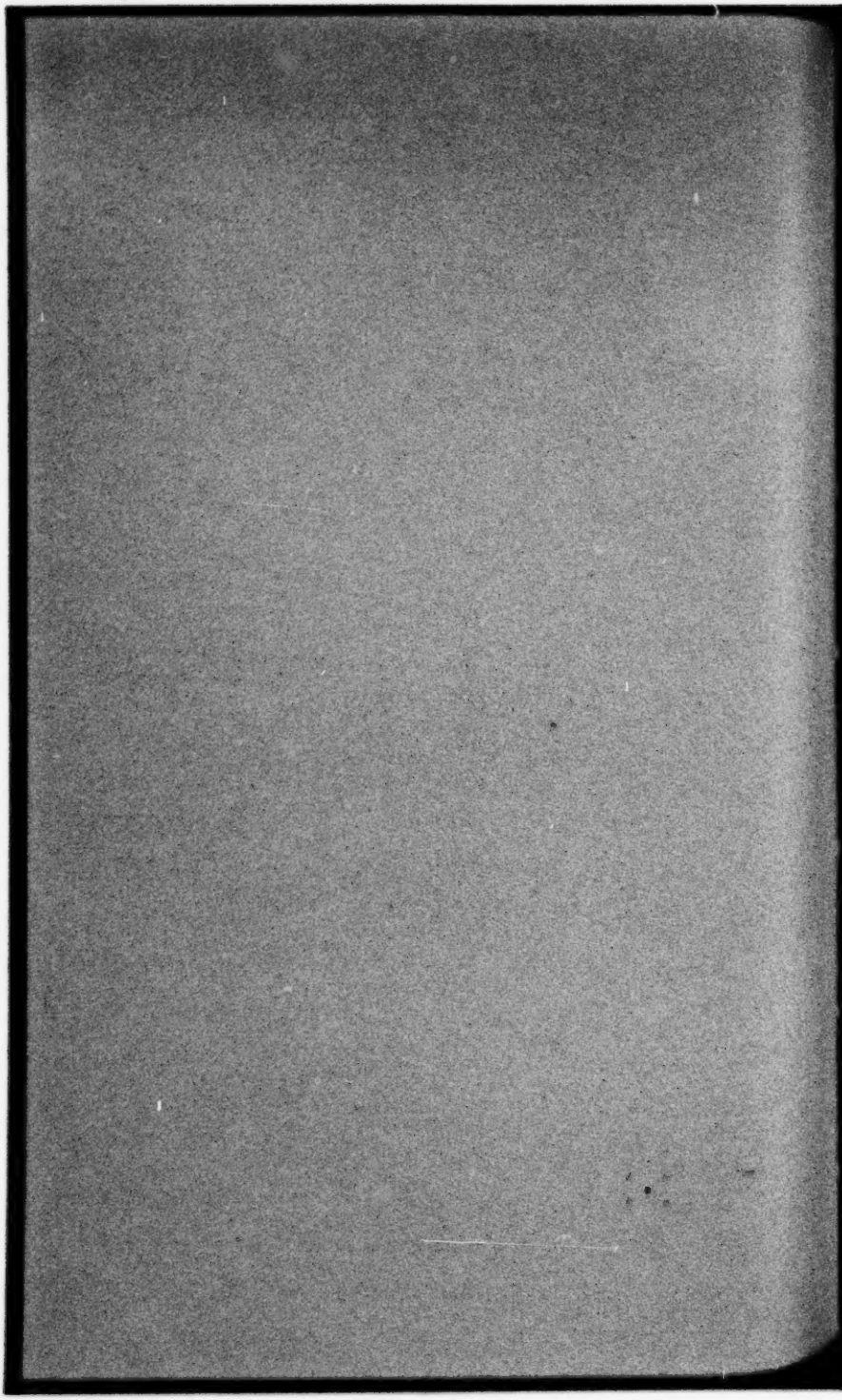

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—against—

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Appellees.

BRIEF OF APPELLANT.

I.

THE OPINIONS IN THE COURTS BELOW.

Two opinions were delivered below.

The first opinion, May 26, 1927, was in the California District Court of Appeal, Second Appellate District, Division Two (Intermediate Court) and is reported 53 California Appellate Decisions 457 (as yet, not otherwise officially reported).

Such opinion is printed in the record (R. 89-103).

The second opinion, March 27, 1928, was in the Supreme Court of the State of California (highest court of the State) and is reported 75 California Decisions 481 (as yet, not otherwise officially reported).

Such opinion is also printed in the record (R. 106-109).

The lower Court took that view of the case which the appellant here urges to be the correct view of the case.

II.

JURISDICTION.

The appellant filed herein its statement under paragraph 1 of Rule 12 of the Revised Rules. On December 3, 1928, a minute was made herein to the effect that probable jurisdiction had been shown by the appellant's statement, so filed.

III.

STATEMENT OF THE CASE.

A. The proceedings resulting in the judgment appealed from.

On April 8, 1926, John James Uttley Brooke, an employee of Morris Pleasure Fishing, Inc., was drowned in the waters of Santa Monica Bay, California. His death occurred in the course of and arising out of his employment.

Proceedings for compensation under the California Workmen's Compensation, Insurance and Safety Act of 1917 (as amended) were instituted before the Industrial Accident Commission of the State of California.

The appellees Sarah Jane Brooke and John Arthur Brooke filed their application for adjustment of claim (R. 10-11) on April 24, 1926.

The appellant, the insurance carrier for the employer of Brooke, having been made a party to the proceedings

(R. 8) filed its answer on June 2, 1926 (R. 12-13) and in such answer denied the application of the Compensation Act with respect to the accident which resulted in the death of Brooke, alleged that Brooke at the time of his death was engaged in maritime employment and was subject to the Admiralty Law and not the Compensation Act, alleged that the Industrial Accident Commission had no jurisdiction in the matter by reason of the maritime employment of Brooke, and denied any and all liability in the matter under the Compensation Act and its amendments (R. 13).

Hearings were had before the Industrial Accident Commission (R. 14-49). In the proceedings before the Industrial Accident Commission the case at bar was designated by the claim number "L. A. 6044". The record herein shows certain hearings in another case, the Gregory case, distinguished by the claim number "L. A. 5986". Another employee named Gregory met his death in the same accident with Brooke, and by stipulation in the case at bar (R. 15) the testimony of certain witnesses in the Gregory case was made evidence and testimony in the instant case.

The constitutional question herein involved was distinctly recognized by the Industrial Accident Commission. The first of the stated issues before the Commission was as follows: "Has this Commission jurisdiction in this proceeding, to wit, was the employment maritime" (R. 16).

It appearing that the applicants Sarah Jane Brooke and John Arthur Brooke were neither wholly nor partially dependent for support upon the decedent Brooke, it was ordered or awarded by the Commission that neither of them was entitled to anything from either the employer, Morris Pleasure Fishing, Inc., or the insurance carrier, the present appellant (R. 50).

In the findings and award of the Commission, filed

October 6, 1926 (R. 49-51), it was decided, however, that the employee was not engaged in maritime employment and that both employer and employee were subject to the provisions of the California Workmen's Compensation, Insurance and Safety Act of 1917, and the Amendments thereto (R. 50). In view, however, of the non-dependency of the claimants, the award was limited to the reasonable expenses of the employee's burial, found to be in the sum of one hundred fifty dollars (R. 50).

The present appellant, on October 21, 1926, made application to the Commission for a re-hearing (R. 51-55) and on such application the exclusive jurisdiction of the Admiralty Law was again asserted and the jurisdiction of the Commission again challenged (R. 52-54).

The Industrial Accident Commission by order filed November 5, 1926, denied the application for a re-hearing (R. 55).

Whereupon the present appellant applied to the District Court of Appeal of the State of California, Second Appellate District, Division Two, for a writ of review (R. 1-7). In such petition the jurisdiction of the Industrial Accident Commission to make any award under the Compensation Act was again challenged and the exclusiveness of the admiralty and maritime jurisdiction asserted (R. 5-6).

The District Court of Appeal granted the writ of review (R. 8-9) and thereafter, on May 26, 1927, in a long opinion (R. 89-103), sustained the contentions of the present appellant, namely, that the matter lay exclusively within the admiralty or maritime jurisdiction and that the Industrial Accident Commission was without jurisdiction to render any award.

The present appellees, aggrieved by the decision of the District Court of Appeal, thereupon petitioned the Supreme Court of the State of California for a hearing of the matter (R. 56-88). Referred to in their petition

and attached thereto as an exhibit is the opinion in the District Court of Appeal (R. 89-103).

The Supreme Court of the State of California granted the appellees' application for a hearing (R. 104), the matter was submitted to it for consideration (R. 105) and on March 27, 1928, the Supreme Court of the State of California affirmed the award of the Industrial Accident Commission (R. 105) (R. 110) with the opinion of that date which appears in the record (R. 106-109).

Application was made by the present appellant to the California Supreme Court for a re-hearing. Such petition for a re-hearing was denied on April 26, 1928 (R. 109).

It is this judgment of the Supreme Court of the State of California, rendered March 27, 1928, affirming the award of the Industrial Accident Commission, from which the present appeal is taken. Such judgment is the one specified in the petition herein for the order allowing appeal (R. 111) and upon which petition all subsequent proceedings in relation to the allowance and perfection of the appeal herein, were had.

B. The Facts.

The following quoted paragraph summarizing most of the essential facts is identically worded in each of the two opinions delivered below (R. 90) (R. 106-107):

> "The evidence taken at the hearings showed the facts to be as follows: The Morris Pleasure Fishing, Inc., is a corporation which carries on the business of maintaining and operating from Santa Monica Bay a small fleet of fishing vessels, for the accommodation of the public seeking recreation in deep-sea fishing. In the fishing seasons its practice has been to have excursions daily from Santa Monica Bay to the ocean fishing grounds, a distance of three to five miles, with fixed charges

both for half-day and full day trips. For use in this business the company has several vessels, ranging from four to fifteen tons registry, equipped with gas engines and capable of cruising a distance of 500 miles. The business has been confined entirely to the maintenance of these pleasure-fishing vessels and the transportation of patrons to and fro by water, except that excursionists have also been supplied with bait. As one of the necessary incidents of its business the company employs seamen to navigate its vessels and before and at the time of the accident which occasioned Brooke's death, he was in the company's employ as an apprentice navigator and seaman. In that capacity he made daily trips as required with the company's vessels, and at times substituted as 'spare skipper' for one of the regular skippers. On April 8, 1926, one of the company's fishing vessels called 'W. K.' of about seven tons registry, was moored, with no one aboard, in Santa Monica Bay about three-quarters of a mile to a mile from the pier. A storm having arisen, the vessel broke from her moorings early in the afternoon, and began to drift toward the shore. In an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employee, named Gregory, put off from the pier [*with the captain himself, in a boat about eighteen feet long], with the purpose in mind of boarding the 'W. K.' and returning her to her anchorage. But as they neared the drifting vessel, their boat was capsized by a heavy wave and all three were drowned."

[**As printed*, these words omitted at Record, p. 107.]

The facts as above stated are supported by the cumulative testimony of Captain Clifford A. Morris, a cousin of the Captain Morris who was drowned (R. 27-30), the testimony of John P. Dugan (R. 31), the testimony of Josephine Morris (R. 38-41), the testimony of

Captain Clifford A. Morris, given in the Gregory case (R. 42-46) and the testimony of John T. Dugan given in the Gregory case (R. 46-48). As above stated, the testimony in the Gregory case was stipulated as evidence in the case at bar (R. 15).

The testimony of Sarah Jane Brooke (R. 17-25), of John Arthur Brooke (R. 25-27) and of Jennie Gregory (R. 34-38) may be utterly disregarded by this Court, as having to do solely with the issues of relationship and dependency, of no present concern in the case.

Upon the hearings themselves, the fact that the locus of the accident was in or upon public navigable waters, seems to have been assumed by all parties. In any event the present appellees at no place contradicted the repeated assertions of appellant that the waters of Santa Monica Bay were such navigable waters. Furthermore in the application of the present appellees to the California Supreme Court for a hearing of the matter after the District Court of Appeal had ordered the award of the Commission to be annulled, the present appellees definitely alleged and admitted that "the injury occurred upon waters susceptible to navigation" (R. 57). This was alleged by the appellees as one of the "dominant facts" in the case. There are other allegations made by the appellees appearing in the record, of similar import (R. 72).

The finding as contained in identical language in each of the opinions below (R. 91) (R. 107), to wit, "The Commission does not dispute the fact that the casualty occurred in navigable waters", is thus more than amply justified.

Brooke was employed as an apprentice navigator and seaman and his death arose out of and in the course of his employment. The answer interposed before the Commission, did not deny the latter fact. Such answer denied only that "the accident" was subject to the pro-

visions of the Compensation Act (R. 13). The findings of the Commission (R. 49) state that Brooke *"while employed as a spare skipper"* (italics ours) "* * * sustained injury occurring in the course of and arising out of his employment, as follows: The employee was drowned."

Both the District Court of Appeal (R. 90) and the California Supreme Court (R. 107) held in identical language that "before and at the time of the accident which occasioned Brooke's death, he was in the company's employ *as an apprentice navigator and seaman"* (italics ours).

There is no evidence in the case that Brooke was employed for any other duties such as shore duties or that he had anything to do except in connection with his employer's vessels.

Captain Morris, who was drowned with Brooke, was his superior officer (R. 48), the "W. K." though moored to the buoy in the bay was in commission as a part of the fishing fleet maintained by the employer (R. 43) and when Captain Morris said to Brooke (R. 31) (R. 48) and to Gregory "Come on, boys, let us go out and save that boat", "Come on boys, let us go get her", "Come on boys, let us save it", referring to the drifting "W. K." such words were addressed to them as employees, they were addressed to Brooke as one of the seamen and a "spare skipper", whose duties it appeared were now in connection with one and now with another of the vessels of the small fleet maintained by the employer.

To have suffered injury *in the course of and arising out of his employment*, as found by the Commission and both Courts below, *Brooke must have been acting in the capacity in which he was employed.*

Brooke met his death as an apprentice navigator and seaman and in no other capacity.

IV.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

The appellant urges each of the Assigned Errors specified in the Assignment of Errors which accompanies the petition for the order allowing appeal (R. 111-113) and which are similarly set forth in the Statement of Points to be Relied Upon, which was served and filed pursuant to the provisions of paragraph 9 of Rule 13 of the Revised Rules (R. 122-124).

Such errors there assigned may be here less formally set forth.

The errors which were committed by the Supreme Court of the State of California in affirming the award made by the Industrial Accident Commission were as follows:

1. In holding that Brooke was not employed pursuant to a martime contract.

2. In holding that Brooke was not engaged in a maritime employment.

3. In holding that Brooke was not engaged in performing a maritime service under a maritime contract.

4. In holding that the injury or accident suffered by Brooke was not a maritime injury or accident.

5. In holding that the business of the employer of Brooke was not a maritime business or industry.

6. In holding that the California Compensation Act with the remedies thereunder were to be applied by reason of the death of Brooke.

7. In holding that all matters in relation to

the death of Brooke were not exclusively within the admiralty and maritime jurisdiction of the United States Courts pursuant to Section 2 of Article III of the Federal Constitution.

8. In holding that the application of the California Compensation Act and the remedies thereunder to the matters in relation to the death of Brooke did not effect a result contrary to or in violation of Section 2 of Article III of the Federal Constitution.

9. In holding that the Industrial Accident Commission had jurisdiction to make an award in relation to the death of Brooke, such holding being in contravention of Section 2 of Article III of the Federal Constitution.

10. In holding that the award of the Industrial Accident Commission in relation to the death of Brooke should be affirmed and further in affirming the same, such holding and such affirmance being in contravention of Section 2 of Article III of the Federal Constitution.

V.

ARGUMENT.

A. Statement Introductory to Summary.

The question for determination will be whether the California Workmen's Compensation, Insurance and Safety Act of 1917, as amended, as it was construed and applied to the facts in this case by the Court below, contravenes Section 2 of Article III of the United States Constitution which extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction.

The appellant contends that the contract of employment of the decedent Brooke, the capacity and character of his service, the nature, character and extent of his

employer's business, the place and manner in which such business was carried on, the character of the accident in which Brooke met his death and the locus of the accident and death, in short, the facts and circumstances of the case, operating together, defeated all application of the Compensation Act with respect to the matter.

It is the claim of the appellant that the facts and circumstances are not such as to permit of any application of the local law as against the exclusiveness of the admiralty and maritime jurisdiction.

B. Summary of the Argument.

Point 1. The principle has been established that State Compensation Acts are not applicable to employees engaged in performing a maritime service or engaged in a maritime occupation who in the course of their employment are injured or meet death upon navigable waters.

Point 2. It is not necessary as an incident or *sine qua non* to admiralty jurisdiction that interstate or international navigation or commerce be involved.

Point 3. The fact that the employer's sole business was to furnish pleasure or recreation to devotees of deep-sea fishing does not take the case out of admiralty. The owners of the employing company were not in business "for pleasure". The company was commercially engaged in furnishing a service for which its patrons paid. The operation of the company's vessels in the furnishing of such service was commerce and navigation, and the contract of employment of Brooke as a seaman and apprentice navigator was a maritime contract of employment.

Point 4. The "W. K." was in commission as a part of the employer's fleet at the time of Brooke's attempt to

reach her. Such attempt was made in the course of his employment and upon the order of his superior officer. As long as his employment was maritime, it was not essential to the attachment of admiralty jurisdiction that he have been aboard the vessel at the time of the injury or accident. All that is necessary to such jurisdiction is that the injury or accident have occurred upon navigable waters.

Point 5. The facts in the instant case readily distinguish it from all of the cases which were referred to below, either by the Court or counsel, as having qualified or limited the principle established by the cases referred to under Point I. In none of the asserted qualifying or limiting cases was the employee a seaman or apprentice navigator. The State Compensation Act cannot be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this Court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction. Injuries to stevedores or longshoremen, occurring upon navigable waters, have been held to be within the exclusive operation of the maritime jurisdiction, as necessary to the maintenance of uniformity in its general characteristics. This Court in the case of *Steamship Bowdoin Co.* v. *Industrial Accident Commission*, 246 U. S. 648, has held the same with respect to a seaman upon a steamer tied to a wharf. All considerations are equally cogent, for requiring a like determination with respect to the seaman and apprentice navigator in the case at bar.

Point 1.

The principle has been established that State Compensation Acts are not applicable to employees engaged in performing a maritime service or engaged in a maritime occupation who in the course of their employment are injured or meet death upon navigable waters.

The statement made as the summary of this, the basic point of the appellant's argument, is founded upon a line of decisions in this Court, to which reference need only be made. Most of these decisions have been so recently considered and reconsidered by the Court in their various applications that it would seem unnecessary so far as their primary import is concerned, to quote from or discuss them at length on the brief.

Southern Pacific Company v. *Jensen*, 244 U. S. 205;

Clyde Steamship Company v. *Walker*, 244 U. S. 255;

Steamship Bowdoin Company v. *Industrial Accident Commission*, 246 U. S. 648;

Peters v. *Veasey*, 251 U. S. 121;

Knickerbocker Ice Company v. *Stewart*, 253 U. S. 149;

Washington v. *Dawson & Company*, 264 U. S. 219;

T. Smith & Son, Inc. v. *Taylor*, 276 U. S. 179;

Northern Coal & Dock Co. v. *Strand*, U. S. Supreme Court No. 41, October Term, 1928, decided December 10, 1928.

Point 2.

It is not necessary as an incident or *sine qua non* to admiralty jurisdiction that interstate or international navigation or commerce be involved.

The chief point of the argument of the appellees, it may be judged from the petition for a hearing which was presented by them to the California Supreme Court, will be that in the instant case there is no proof that interstate or international commerce or navigation is involved. They contend (R. 57) that "the business of the employer was entirely local to the City and Port of Santa Monica" and that there was "not the slightest taint of interstate or foreign commerce".

In the petition referred to, the present appellees further state (R. 67) that "The Federal courts in admiralty (verb is missing from the record, probably 'act' or 'assume jurisdiction') only with respect to interstate and foreign commerce and the ships that carry it, or contracts with or torts to persons that assist in its continued movement. This jurisdiction of the Admiralty Court in maritime matters, therefore, exists only because of interstate and foreign commerce as such."

Nothing, it is submitted, is more fundamentally wrong than such statements of the present appellees.

The admiralty jurisdiction of the Federal courts cannot be made to depend upon or be derived from the power of Congress to regulate commerce between the States. Such jurisdiction depends only upon the grant contained in Section 2 of Article III of the Federal Constitution.

The Propeller Genesee Chief et al. v. *Fitzhugh et al.*, 53 U. S. (12 How.) 443;
The Belfast, 74 U. S. (7 Wall.) 624, 640-641.

It was definitely held by the Court in *The Belfast*, both with respect to maritime torts and maritime contracts, that the admiralty jurisdiction prevails even though the voyage upon navigable waters was only between ports of the same State.

In *The Robert W. Parsons*, a canal boat engaged in traffic on the Erie Canal, wholly within the State of New York, was held subject to the admiralty jurisdiction. *The fact that the Erie Canal was a connecting highway for interstate commerce was only important as a factor in determining whether the canal constituted public navigable waters of the United States.* The character of the waters being thus once determined, the jurisdiction applied to the vessel although its voyages were entirely within the State.

The Robert W. Parsons, 191 U. S. 17.

In the case of *Rodgers & Hagerty, Inc.* v. *The City of New York* (Circuit Court of Appeals, 2nd Circuit), admiralty jurisdiction was held to apply to a contract for the removal of ashes from a sunken scow belonging to the City of New York and used by its Street Cleaning Department for the disposal of refuse. Certiorari was refused by this Court.

Rodgers & Hagerty, Inc. v. *City of New York*, 285 Fed. 362;
City of New York v. *Rodgers & Hagerty, Inc.*, 261 U. S. 621.

In the case of *Workman* v. *New York City*, admiralty jurisdiction was sustained and the City of New York held liable for damages caused by the negligent operation of one of its fire boats. It was asserted and taken to be the fact that the fire boat was an instrumentality of the Municipal Corporation in its municipal affairs.

This fact did not prevent the application of the Admiralty Law. Certainly the City of New York as a Municipal Corporation in the operation of one of its fire boats was not engaged in commerce of any kind whatsoever. It was, however, engaged in navigation upon navigable waters when the wrong was committed. The operation of the fire boat though "local to the City of New York" was nevertheless within the maritime jurisdiction.

Workman v. *New York City*, 179 U. S. 552.

The application made to the California Supreme Court by the present appellees has been faithfully reproduced typographically in the printed record. A hasty glance at the record (R. 57, 87) shows that emphasis has been and will be laid by the appellees upon the words "international or interstate relations" and "direct relation to navigation and commerce in its international and interstate aspects". These words were isolated from their context as contained in various decisions of the Court.

But this Court has from time to time said much more than "international or interstate relations" and "direct relation to navigation and commerce in its international and interstate relations". There is another norm by which the extent of the admiralty jurisdiction is to be measured.

This Court has insisted that no local law or local rule would be permitted to "*work material prejudice to any characteristic features of the general maritime law*, OR interfere with the proper harmony or uniformity of that law in its international or interstate relations". (Appellant has here reversed the emphasis and shown the plural limitation.)

Grant Smith-Porter Co. v. *Rohde*, 257 U. S. 469, 476;

Millers' Indemnity Underwriters v. *Braud*, 270 U. S. 59, 64.

The appellees seizing upon and emphasizing the latter words and neglecting the former have improperly concluded that admiralty applied only to interstate or foreign commerce.

The Court, in fact, has at times referred to the limitations upon the operation of the local law *without any reference at all to interstate or foreign commerce.*

In one case it is stated:

> "When injured certainly he was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law."
>
> *Alaska Packers Ass'n* v. *Industrial Acc. Commission,* 276 U. S. 467, 469.

In another case it is stated:

> "It is settled by our decisions that where the employment, although maritime in character pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity."
>
> *Sultan Railway & Timber Co.* v. *Department of Labor,* 277 U. S. 135, 137.

In support of the erroneous contention of the present appellees, there are references, in their petition to the Court below, to certain authorities of which a few must be briefly discussed.

In *Sherlock et al.* v. *Alling, Admr.*, 93 U. S. 99, the only point which was decided was that until Congress has acted otherwise, there are certain matters on which the States may legislate, as long as there is no interference with the navigation and use of vessels and no interference with interstate commerce. The administrator of the deceased person brought suit under the Indiana Death Statute. The collision of the vessels took place in the Ohio River but within the territorial jurisdiction of Indiana. The Court sustained the action as no encroachment on the "commercial power" of Congress, although the injury was referred to as a "marine tort". *The decedent was a passenger on the vessel which burned as a result of the collision.* He was a citizen of Indiana, the "tort" though on the river, occurred in Indiana, and since Congress had not legislated regarding such "marine torts" the administrator was permitted to pursue his remedy in the State courts under the Indiana Statute. A careful reading of the case will show nothing in support of the appellees' contention that for maritime jurisdiction to attach, the navigation or commerce involved must be other than intrastate.

In *Anderson* v. *Pacific Coast S. S. Co.*, 225 U. S. 187, the only point decided was that State laws concerning pilotage are regulations of commerce, but they fall within that class of powers which may be exercised by the States until Congress sees fit to act. There is nothing in the case that expressly or impliedly supports the appellees' erroneous contention under discussion.

In *The Daniel Ball* v. *The United States*, 77 U. S. (10 Wall.) 557, two points were involved; first, whether the steamer was engaged in transporting merchandise and passengers on a navigable water of the United States within the meaning of the Acts of Congress regulating in-

spection, and second, whether those Acts are applicable to a steamer engaged as a common carrier between places in the same State when a portion of the merchandise transported is destined to places in other States or comes from places without the State, the steamer not running in connection with or in continuation of any line of steamers or other vessels or any railway line leading to or from another State. The Inspection Acts applied to vessels operating upon "navigable waters of the United States". The river involved was the Grand River in the State of Michigan. It was held that such river was a public navigable water of the United States by reason of the fact that from its mouth in Lake Michigan it formed a continuous highway for commerce with other States and foreign countries. The language quoted by the appellees in their petition to the California Supreme Court is quoted from the latter half of the opinion where the sole question concerned is the question of the regulation of commerce under the power of Congress to regulate interstate or international commerce, and where the Court held that a steamer is engaged in commerce between the States even though she operated only between two ports of the same State where she carried goods brought from without the limits of the State and destined to places without the State. There is nothing express or implied in the decision in support of the appellees' contention that admiralty jurisdiction is dependent upon the fact that interstate or international commerce be involved.

The General Smith, 17 U. S. (4 Wheat.) 438, does not expressly or impliedly hold that interstate or international commerce or navigation must be involved as a necessary incident to maritime jurisdiction. This case involved the peculiar American doctrine with respect to supplies furnished to a ship in its home port. It was

held that the law of Maryland (the common law), the home port of the ship, gave no lien for services or supplies, so under the maritime law no specific lien could be enforced in admiralty *in rem*. But the Court said the admiralty jurisdiction would have been sustained had the suit been *in personam*. "Admiralty rightfully possesses a general jurisdiction in cases of material-men" (Opinion at p. 443). The only peculiarity in the situation is that in respect of ships not in their home port a special remedy is given to the material-men by the Admiralty Law. This does not prove or even argue that ships in their home port are not subject to the Admiralty Law. If the State law gives the lien for supplies furnished in the home port, such lien can be enforced *in rem* only in the Admiralty Courts.

The Robert W. Parsons, 191 U. S. 17;
The Lottawanna (*Rodd* v. *Heartt*), 88 U. S. (21 Wall.) 558.

The last case above cited, *The Lottawanna*, was cited to the California Supreme Court by the present appellees (R. 67) in support of their contention under discussion. That case, it is submitted, fails to support the appellees in their contention. The fact that the case recognizes a sphere of matters which may be regulated by the States until Congress acts, is not argumentative of their contention. On the contrary, the holding that a maritime lien given by the State law to a material-man who furnishes a ship in its home port can only be proceeded upon *in rem* in the Admiralty Court, would seem to argue against the appellees' contention, for the right (the lien) created by the local law and involving a ship in its home port (the local jurisdiction without any connection with interstate or foreign commerce), is held to be enforcible *in rem* only in the Admiralty Court.

With respect to the abbreviated quotation from *The Propeller Genesee Chief et al.* v. *Fitzhugh et al.*, 53 U. S. (12 How.) 443, as it appears in the record (R. 70), it must be said that the sense of the original is by no means thereby conveyed. The paragraph from which the quoted language is taken appears at page 458 of the report (instead of at p. 457 as printed), and simply describes two enactments of Congress, namely, *Section 9 of the Judiciary Act of 1789*, and the *Act of February 26, 1845* (*5 Stat. at Large 726*). The Court says, "The jurisdiction under both laws is confined to vessels enrolled and licensed for the coasting trade; and the Act of 1845 extends only to such vessels when they are engaged in commerce between different States or territories. It does not apply to vessels engaged in domestic commerce of a State nor to vessels or boats not enrolled or licensed for the coasting trade under the authority of Congress." There is nothing in the case which can be interpreted in support of the appellees' contention that the Admiralty Law applies only to interstate or international commerce or navigation.

See also:

Ex parte Boyer, 109 U. S. 629, 632;
In re Garnett, 141 U. S. 1, 15, 17.

Point 3.

The fact that the employer's sole business was to furnish pleasure or recreation to devotees of deep-sea fishing does not take the case out of admiralty. The owners of the employing company were not in business "for pleasure". The company was commercially engaged in furnishing a service for which its patrons paid. The operation of the company's vessels in the furnishing of such service was commerce and navigation, and the contract of employment of Brooke as a seaman and apprentice navigator was a maritime contract of employment.

The present appellees would defeat the admiralty jurisdiction for the reason, as stated by them, that the employer's business was "a pleasure concession pure and simple" (R. 57). They assert it was "a local pleasure concession business in no way connected with that commerce and navigation as controlled by the Admiralty Courts" (R. 72).

It is further asserted by the appellees *in the record*: "Though it (employer's business) *involved a use of the sea, of the operation of vessels upon navigable waters, and the carriage of passengers for hire,* it still was not a maritime business in the sense that the word 'maritime' is used in connection with the maritime law in the admiralty courts. It was a business purely local to the City of Santa Monica" (R. 72).

It is urged that the appellees' contentions constitute a new and erroneous doctrine. The motives of the employer's customers or patrons in riding upon its boats and the fact that they did so for recreation cannot affect the fact that the corporation employer was in business and commerce, and in operating the boats it was

engaged in navigation for strictly monetary commercial gain.

The carriage of passengers for hire is commerce.

The Moses Taylor, 4 Wall. 411;
County of Mobile v. *Kimball*, 102 U. S. 691, 702;
Gloucester Ferry Company v. *Pennsylvania*, 114 U. S. 196;
Covington Bridge Co. v. *Kentucky*, 154 U. S. 204;
Bennett v. *The United States*, 194 Fed. 630, affirmed *Bennett* v. *U. S.*, 227 U. S. 333;
United States v. *Hoke*, 187 Fed. 992, affirmed *Hoke* v. *U. S.*, 227 U. S. 308.

The fact that the business of Tyson & Brother was the resale of theatre tickets, the aiding of anxious and willing-to-pay customers in the pursuit of recreation and pleasure, did not prevent the Court from giving them its protection in preventing the enforcement, as a violation of the Fourteenth Amendment, of a New York Statute, regulating such "pleasure business".

Tyson & Brother v. *Banton*, 273 U. S. 418.

A standard work on admiralty gives the following:

> "Each nation has its mode of construction, rigging and navigation, and its peculiar kind of craft, but all are ships and vessels that are manned by a master and crew and are devoted to the purposes of transportation and commerce, whether in the fisheries or in passenger or pleasure service or in trade."

Benedict on Admiralty (5th Ed.) Vol. I, Section 53, page 74.

Brooke was engaged as a seaman and apprentice navigator with the vessels which made regular voyages of from three to five miles out from shore. At times they went over to "the red-cod bank" which was about ten miles straight out (R. 39). These voyages over three miles out were all beyond the territorial jurisdiction of the State of California.

California Constitution, Article XXI Section 1. (Printed in Appendix.)

Brooke was hired to assist in the operation and management of the vessels which had a five hundred mile cruising capacity and at times he had actual charge of a boat. These boats made regular trips out to the high seas, such trips were voyages in the strict maritime sense of the word, there was a regular service "and each voyage had a place of origin and a place of destination, though the termini may not have been geographically constant. Since the ships did actually convey passengers to and fro between the anchorage in Santa Monica Bay and the deep-sea fishing banks they were not only capable of use but were in real use as vehicles of nautical transportation, and while performing their service to patrons they were in fact engaged in commerce upon navigable waters" (quoted from Opinion of Johnson, *J.*, in District Court of Appeal) (R. 92).

The contract of employment of Brooke was a maritime contract of employment.

The Thomas Jefferson, 10 Wheat. 428;
Chelentis v. *Luckenbach S. S. Co.*, 247 U. S. 372, 379;
Atlantic Transport Co. v. *Imbrovek*, 234 U. S. 52, 62.

Point 4.

The *"W. K."* was in commission as a part of the employer's fleet at the time of Brooke's attempt to reach her. Such attempt was made in the course of his employment and upon the order of his superior officer. As long as his employment was maritime, it was not essential to the attachment of admiralty jurisdiction that he have been aboard the vessel at the time of the injury or accident. All that is necessary to such jurisdiction is that the injury or accident have occurred upon navigable waters.

The appellees have urged that there is no admiralty jurisdiction because Brooke was not actually a part of the crew of the *"W. K."* at the time of the accident, because he was not upon board the ship, but that he was merely on board an eighteen foot skiff sent out from the land to reach "a deserted, drifting vessel, which at the time it started to drift was equivalent only to a floating dock or raft or any other piece of valuable personal property" (R. 73).

The *"W. K."* was in commission as a part of the employer's fleet at the time of the accident (R. 43). The Industrial Accident Commission found that Brooke was employed at the time of the accident as a spare skipper and that his death by drowning occurred in the course of and arising out of his employment (R. 49).

The two lower California Courts have held in identical language that Brooke was an apprentice navigator and seaman and that "in an effort to save the vessel from destruction, Captain Morris, as Brooke's superior officer, had Brooke and another employee, named Gregory, put off from the pier with the captain himself, in a boat

about eighteen feet long, with the purpose in mind of boarding the *"W. K."* and returning her to her anchorage" (R. 90, 107).

Brooke met his death as a seaman and apprentice navigator carrying out the orders of his superior officer in an effort to save his employer's maritime property from destruction. His death occurred in or upon navigable waters. It is not necessary to the attachment of the admiralty jurisdiction for him to have been aboard the *"W. K."* or any other vessel at the time of his death.

The Plymouth, 3 Wall. 20, 35;
Atlantic Transport Co. v. *Imbrovek*, 234 U. S. 52, 59-60;

See also:

Southern Pacific Co. v. *Jensen*, 244 U. S. 205 at page 252 (Dis. op. of Mr. Justice Pitney).

Point 5.

The facts in the instant case readily distinguish it from all of the cases which were referred to below, either by the Court or counsel, as having qualified or limited the principle established by the cases referred to under Point 1. In none of the asserted qualifying or limiting cases was the employee a seaman or apprentice navigator. The State Compensation Act cannot be made applicable to an accident in which the employee was a seaman or apprentice navigator, without affecting or impinging upon the admiralty jurisdiction to an extent heretofore never permitted by this Court. A seaman's injury or death on navigable waters can never be a local matter within the local jurisdiction. Injuries to stevedores or longshoremen, occurring upon navigable waters, have been held to be within the exclusive operation of the maritime jurisdiction, as necessary to the maintenance of uniformity in its general characteristics. This Court in the case of *Steamship Bowdoin Co.* v. *Industrial Accident Commission*, 246 U. S. 648, has held the same with respect to a seaman upon a steamer tied to a wharf. All considerations are equally cogent, for requiring a like determination with respect to the seaman and apprentice navigator in the case at bar.

It will be asserted by the appellees that the doctrine established by *Southern Pacific Company* v. *Jensen*, 244 U. S. 205; *Knickerbocker Ice Company* v. *Stewart*, 253 U. S. 149; *Washington* v. *Dawson & Company*, 264 U. S. 219, and the other cases cited above under Point 1, has been limited, qualified or affected by cases decided in this

Court in which effect has been given to a State Compensation Act or the jurisdiction of the local law has been otherwise approved. This Court, it is submitted, has not deviated from the fundamental doctrine, and in those cases in which the local law was given effect to, the same was done either because the essential facts necessary to admiralty jurisdiction did not at all exist or because the local law could be permitted to prevail without in anywise affecting any essential characteristic of the Admiralty Law in its general application.

In *Western Fuel Company* v. *Garcia*, 257 U. S. 233, a stevedore was killed while at work in the hold of a vessel discharging cargo in San Francisco Bay. There was no proceeding under the local Compensation Law. A suit *in personam* based on allegations of negligence was instituted in admiralty by the heirs of the deceased. It was held that the Admiralty Court could entertain jurisdiction for the alleged tort without prejudice to the rule of uniformity. The wrong had been committed within the territorial limits of the State. The remedy which was sought to be applied was an action *in personam* based upon negligence. Actions *in personam* in the Admiralty Court based upon negligence are matters that can be therein litigated in consonance with the machinery and procedure of the Admiralty Court. The situation is entirely different with respect to a Compensation Act which enforces the liability irrespective of negligence or fault. The local death statute, it was held, simply supplemented the admiralty jurisdiction and could be given effect to in the Admiralty Court. The death statute created locally a new right which was ambulatory, at least to the extent of being enforcible *in personam* in a court other than a court of the State. As the employment was, in addition, a maritime employment and the locus of the accident was upon navigable waters, the

Admiralty Court had jurisdiction to enforce the right created by the State law. This is also the doctrine of

Great Lakes Dredge and Dock Co. v. *Kierejewski*, 261 U. S. 479.

These two cases simply decide that a new right created by the State law may be given effect to and enforced in a court of admiralty in those instances where the other essential elements necessary to admiralty jurisdiction exist. Such decisions are far from holding that the State Compensation Act may be applied in the State courts to a state of facts which by virtue of the character of the employment and the locus of the accident are solely within the admiralty jurisdiction. There is no constitutional or statutory inhibition which prevents the Admiralty Court, the essentials to its jurisdiction existing, from giving effect to and enforcing a new right created by the local law. Also, a right sanctioned by the maritime law may be enforced in a State court, as distinguished from the Admiralty Court, through any appropriate remedy recognized at common law. But if such attempt be made to enforce the right, the liability must be measured not by the common law or State standards but by the standards of the maritime law:

Chelentis v. *Luckenbach Steamship Co.*, 247 U. S. 372.

In the case at bar, the rights and liabilities arising out of the death of Brooke must be measured by the maritime law.

In *Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469, the workman was employed generally as a carpenter by a company whose business was the building of vessels. The employee was injured by the employer's negligence

while engaged in construction work on an uncompleted vessel which however had been launched and was lying in navigable waters of the United States in Oregon. The vessel though substantially completed was not ready for delivery and the work which the employee was doing at the time of the injury related solely to the construction. It was held that the contract for the construction of the vessel was non-maritime and that the employee's employment was therefore non-maritime. Although the vessel lay in navigable waters neither Rohde's employment nor his activities at the time had any relation to navigation or commerce. Since shipbuilding is a non-maritime matter there was no relationship at all between the Admiralty Law and the employment. There is no requirement of the Admiralty Law that does or can require uniformity regarding the rights and liabilities arising out of shipbuilding, a non-maritime matter. In the case at bar the employment was maritime and the affected employee was a seaman. Furthermore, although as shown by what is stated in the foregoing, the point was not in itself necessary to the decision of the case, the employer and employee, it was held, had definitely contracted with respect to the Oregon Compensation Act which was optional to accept or reject. In the present case there was no definite contract of employment with reference to the Compensation Act as the Act of California is not optional.

Stress was laid by the Court below (R. 108) upon *State Industrial Commission* v. *Nordenholt Corporation*, 259 U. S. 263. In that case the employee, a longshoreman, died from injuries received while on the dock. A dock is but an extension of the land:

> *Cleveland Terminal & V. R. Co.* v. *Cleveland S. S. Co.*, 208 U. S. 316.

The locality element necessary to the maritime jurisdiction was thus completely lacking. An injury to a longshoreman or even a seaman upon the land was never justiciable within the admiralty jurisdiction. The case of *State Industrial Commission* v. *Nordenholt Corporation* approved the application of the local law for the reason that the matter was not within the admiralty jurisdiction. There was no admiralty jurisdiction for the local law to come into conflict with at any time.

In *Millers' Indemnity Underwriters* v. *Braud*, 270 U. S. 59, a diver employed by a shipbuilding corporation was submerged from a small floating barge or pontoon at anchor in a navigable river thirty feet from the shore, to saw off timbers from an abandoned set of ways once used for launching ships and which had become an obstruction to navigation. While the employee was working upon the submerged timbers his air supply was in some way cut off and he died through suffocation. The Court below, *sub nom Millers' Indemnity Underwriters* v. *Bourdreaux*, 261 S. W. (Texas) 137, 140 (not officially reported) states that the employee was not engaged in work upon or connected with the barge and could not be considered a seaman. In the case under discussion, though the tort was a maritime tort, the work of the diver was not so directly connected with navigation as to fall exclusively within the maritime jurisdiction. In the case at bar the employee was a seaman and his work was directly connected with navigation and commerce.

In *Alaska Packers Association* v. *Industrial Accident Commission of the State of California*, 276 U. S. 467, the Compensation Act was permitted to apply because the injury was received by the employee while actually upon the land, and his contract for services involved services in connection with the canning operations conducted by the employer upon the land as well as services

as a seaman upon one of the employer's ships. When injured, therefore, the employee was not a seaman. He was simply an employee engaged in connection with the canning operations of the employer. The Compensation Act was therefore permitted to apply for the reason, as stated by the Court "When injured certainly he was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law. The work was really local in character" (Opinion at p. 469).

In the case at bar, Brooke was employed only as a seaman and apprentice navigator. He had no work of any character in connection with any operations upon the land. The accident which resulted in his death occurred upon navigable waters while he was performing a service under the direction of his superior, in connection with an attempt to save a ship of his employer, in commission and actually afloat upon navigable waters.

Sultan Railway & Timber Co. v. *Department of Labor and Industries*, 277 U. S. 135. The employees involved in this and the companion case decided therewith were engaged in logging and saw-mill operations. Their work it is true was done upon navigable waters, but it was strictly confined to the immediate locality. There was no element of transportation. Those in the one case who were engaged in putting sawlogs into booms did their work before any transportation began. Those in the other case who took apart the booms and guided the logs to the conveyor leading to the saw-mill did their work after all transportation had been completed. The employees were not seamen or apprentice navigators or in any way connected with vessels or transportation. The facts are clearly distinguishable from the instant case where a seaman, navigation and commerce are directly involved.

As stevedoring contracts and injuries occurring on navigable waters to stevedores and others working under maritime contracts are matters essentially and characteristically maritime, so was the accident to Brooke, a seaman and apprentice navigator. The local law cannot interfere. To permit the application of the Compensation Act to seamen and apprentice navigators would interfere with a characteristic feature of the maritime law in its general and uniform application.

This Court has already denied application of a prior Workmen's Compensation Act of the State of California in the case of a seaman employed, like Brooke in the instant case, under an oral contract of employment.

> *Steamship Bowdoin Co.* v. *Industrial Accident Commission of the State of California*, 246 U. S. 648.

In the case just cited the record in this Court (file No. 25,899) shows (pp. 8-9) the facts stated above regarding the seaman's employment.

CONCLUSION.

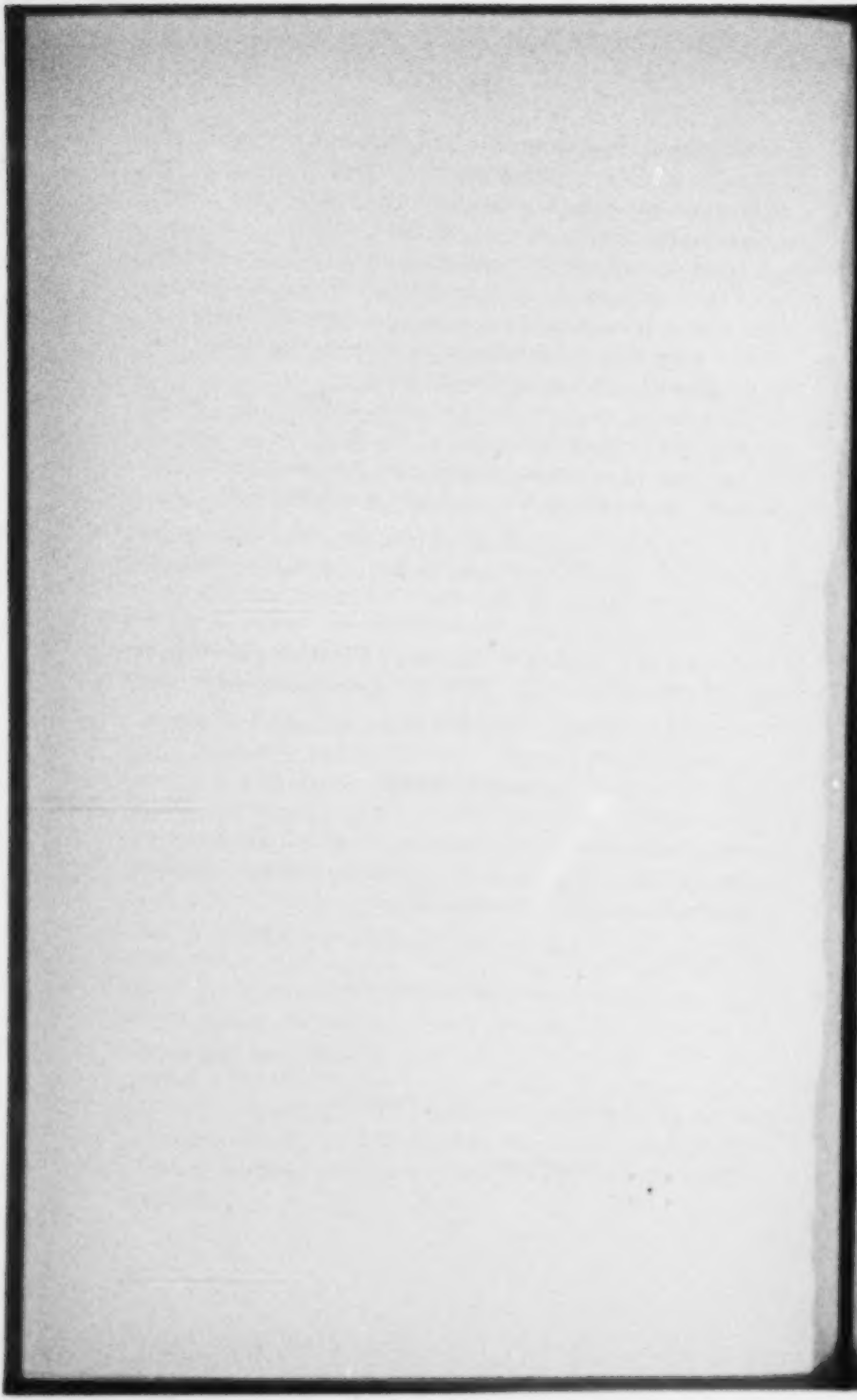
The judgment of the Supreme Court of the State of California affirming the award of the Industrial Accident Commission should be reversed.

Dated, New York, N. Y., February 13, 1929.

Respectfully submitted,

LEO C. WEILER,
Counsel for Appellant.

On the Brief with Appellant's Counsel:
MAX ASH,
WILLIAM E. LOWTHER.



Appendix.

CONSTITUTION OF CALIFORNIA.

Article XXI, Section 1:

"The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south * *; thence running in a straight line, in a southeasterly direction to the River Colorado, * *; thence down the middle of the channel * * * to the boundary line between the United States and Mexico * *; thence running west and along said boundary line *to the Pacific Ocean, and extending therein three English miles;* thence running in a northwesterly direction and following the direction of the Pacific Coast to the forty-second degree of north latitude; thence on the line * * * to the point or place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast."